



ENTERED  
07/27/2018

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:	)	Chapter 11
	)	
GENON ENERGY, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 17-33695 (DRJ)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 1682</b>

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**AMENDED ORDER APPROVING DEBTORS' MOTION FOR ENTRY  
OF AN ORDER (I) APPROVING THE PROPOSED KANSAS AND MISSOURI  
AGREEMENT AND RELEASE PURSUANT TO BANKRUPTCY RULE 9019 AND (II)  
GRANTING RELATED RELIEF**  
(Docket No. 1773)

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned Debtors for entry of an order (this "Order") approving the Kansas and Missouri Settlement Agreement, attached hereto as

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: GenOn Energy, Inc. (5566); GenOn Americas Generation, LLC (0520); GenOn Americas Procurement, Inc. (8980); GenOn Asset Management, LLC (1966); GenOn Capital Inc. (0053); GenOn Energy Holdings, Inc. (8156); GenOn Energy Management, LLC (1163); GenOn Energy Services, LLC (8220); GenOn Fund 2001 LLC (0936); GenOn Mid-Atlantic Development, LLC (9458); GenOn Power Operating Services MidWest, Inc. (3718); GenOn Special Procurement, Inc. (8316); Hudson Valley Gas Corporation (3279); Mirant Asia-Pacific Ventures, LLC (1770); Mirant Intellectual Asset Management and Marketing, LLC (3248); Mirant International Investments, Inc. (1577); Mirant New York Services, LLC (N/A); Mirant Power Purchase, LLC (8747); Mirant Wrightsville Investments, Inc. (5073); Mirant Wrightsville Management, Inc. (5102); MNA Finance Corp. (8481); NRG Americas, Inc. (2323); NRG Bowline LLC (9347); NRG California North LLC (9965); NRG California South GP LLC (6730); NRG California South LP (7014); NRG Canal LLC (5569); NRG Delta LLC (1669); NRG Florida GP, LLC (6639); NRG Florida LP (1711); NRG Lovett Development I LLC (6327); NRG Lovett LLC (9345); NRG New York LLC (0144); NRG North America LLC (4609); NRG Northeast Generation, Inc. (9817); NRG Northeast Holdings, Inc. (9148); NRG Potrero LLC (1671); NRG Power Generation Assets LLC (6390); NRG Power Generation LLC (6207); NRG Power Midwest GP LLC (6833); NRG Power Midwest LP (1498); NRG Sabine (Delaware), Inc. (7701); NRG Sabine (Texas), Inc. (5452); NRG San Gabriel Power Generation LLC (0370); NRG Tank Farm LLC (5302); NRG Wholesale Generation GP LLC (6495); NRG Wholesale Generation LP (3947); NRG Willow Pass LLC (1987); Orion Power New York GP, Inc. (4975); Orion Power New York LP, LLC (4976); Orion Power New York, L.P. (9521); RRI Energy Broadband, Inc. (5569); RRI Energy Channelview (Delaware) LLC (9717); RRI Energy Channelview (Texas) LLC (5622); RRI Energy Channelview LP (5623); RRI Energy Communications, Inc. (6444); RRI Energy Services Channelview LLC (5620); RRI Energy Services Desert Basin, LLC (5991); RRI Energy Services, LLC (3055); RRI Energy Solutions East, LLC (1978); RRI Energy Trading Exchange, Inc. (2320); and RRI Energy Ventures, Inc. (7091). The Debtors' service address is: 804 Carnegie Center, Princeton, New Jersey 08540.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

**Exhibit 1**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the submissions by the parties and having heard the statements in support of the relief requested by each of them at the Hearing; and this Court having determined that the legal and factual bases set forth in the submissions and at the Hearing establish just cause for the relief granted in this Order; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Kansas and Missouri Settlement Agreement and Release and the relief requested therein is hereby approved pursuant to Bankruptcy Rule 9019.
3. Named Claimants’ Counsel shall be reimbursed in the amount of \$1,618,590.00, consisting of \$417,062.00 on account of expenses advanced to date in the MDL Litigation and these chapter 11 cases, and \$1,201,528.00 in attorneys’ fees (the “Fees and Expenses Reimbursement”).
4. The Fees and Expenses Reimbursement shall be paid solely from the Settlement Amount.
5. The Court finds that the Kansas and Missouri Settlement Agreement is fair, reasonable, and in the best interest of the estate given the probability of success regarding the MDL

Litigation, the complexity and duration of the litigation, the interest of creditors, and the responses to the Motion, and the fact that the Kansas and Missouri Settlement Agreement is the product of arm's length bargaining between the Parties.

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

7. The Parties are authorized to take all actions necessary or appropriate to effectuate the relief granted herein.

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Signed: July 26, 2018.**



DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Kansas and Missouri Settlement Agreement**

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Mutual Release (this “Settlement Agreement”) is made and entered into as of June 22, 2018 by and among:

- i. The debtors and debtors in possession (collectively, the “Debtors”)<sup>1</sup> in the jointly administered chapter 11 cases captioned *In re GenOn Energy, Inc., et al.*, Case No. 17-33695 (DRJ) (Bankr. S.D. Tex.) (Jointly Administered) (the “Chapter 11 Cases”);
- ii. Heartland Regional Medical Center (“Heartland”), Northwest Missouri State University (“Northwest Missouri”), Prime Tanning Corporation (“Prime Tanning”), and the putative class proposed in the *Amended Complaint for Damages* filed in *In re Western States Wholesale Natural Gas Antitrust Litigation*, Case No. 2:03-cv-01431-PMP-PAL [MDL Docket No. 1863] attached as Exhibit B [Docket No. 767-4] to the *Motion and Memorandum of Law of the Natural Gas Litigation Midwest Class Plaintiffs in Support of Allowance of Class Proofs of Claim* (the “Class Proofs of Claim Allowance Motion”) [Docket No. 767] (the “Missouri Putative Class”, and, together with Heartland, Northwest Missouri, and Prime Tanning, the “Missouri Claimants”);
- iii. Learjet, Inc. (“Learjet”), Topeka Unified School District 501 (“Topeka”, and together with Learjet, Heartland, Northwest Missouri, and Prime Tanning, the “Named Claimants”), and the putative class proposed in the *Second Amended*

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: GenOn Energy, Inc. (5566); GenOn Americas Generation, LLC (0520); GenOn Americas Procurement, Inc. (8980); GenOn Asset Management, LLC (1966); GenOn Capital Inc. (0053); GenOn Energy Holdings, Inc. (8156); GenOn Energy Management, LLC (1163); GenOn Energy Services, LLC (8220); GenOn Fund 2001 LLC (0936); GenOn Mid-Atlantic Development, LLC (9458); GenOn Power Operating Services MidWest, Inc. (3718); GenOn Special Procurement, Inc. (8316); Hudson Valley Gas Corporation (3279); Mirant Asia-Pacific Ventures, LLC (1770); Mirant Intellectual Asset Management and Marketing, LLC (3248); Mirant International Investments, Inc. (1577); Mirant New York Services, LLC (N/A); Mirant Power Purchase, LLC (8747); Mirant Wrightsville Investments, Inc. (5073); Mirant Wrightsville Management, Inc. (5102); MNA Finance Corp. (8481); NRG Americas, Inc. (2323); NRG Bowline LLC (9347); NRG California North LLC (9965); NRG California South GP LLC (6730); NRG California South LP (7014); NRG Canal LLC (5569); NRG Delta LLC (1669); NRG Florida GP, LLC (6639); NRG Florida LP (1711); NRG Lovett Development I LLC (6327); NRG Lovett LLC (9345); NRG New York LLC (0144); NRG North America LLC (4609); NRG Northeast Generation, Inc. (9817); NRG Northeast Holdings, Inc. (9148); NRG Potrero LLC (1671); NRG Power Generation Assets LLC (6390); NRG Power Generation LLC (6207); NRG Power Midwest GP LLC (6833); NRG Power Midwest LP (1498); NRG Sabine (Delaware), Inc. (7701); NRG Sabine (Texas), Inc. (5452); NRG San Gabriel Power Generation LLC (0370); NRG Tank Farm LLC (5302); NRG Wholesale Generation GP LLC (6495); NRG Wholesale Generation LP (3947); NRG Willow Pass LLC (1987); Orion Power New York GP, Inc. (4975); Orion Power New York LP, LLC (4976); Orion Power New York, L.P. (9521); RRI Energy Broadband, Inc. (5569); RRI Energy Channelview (Delaware) LLC (9717); RRI Energy Channelview (Texas) LLC (5622); RRI Energy Channelview LP (5623); RRI Energy Communications, Inc. (6444); RRI Energy Services Channelview LLC (5620); RRI Energy Services Desert Basin, LLC (5991); RRI Energy Services, LLC (3055); RRI Energy Solutions East, LLC (1978); RRI Energy Trading Exchange, Inc. (2320); and RRI Energy Ventures, Inc. (7091). The Debtors’ service address is: 804 Carnegie Center, Princeton, New Jersey 08540.

*Complaint* filed in *In re Western States Wholesale Natural Gas Antitrust Litigation*, Case No. 2:03-cv-01431-PMP-PAL [MDL Docket No. 1857] attached as Exhibit A [Docket No. 767-3] to the Class Proofs of Claim Allowance Motion (the “Kansas Putative Class”, and, together with Learjet and Topeka, the “Kansas Claimants”); and

- iv. Debtors together with the Named Claimants collectively constitute the “Parties,” and individually, each constitutes a “Party.”

### **RECITALS**

**WHEREAS**, on March 22, 2007, Heartland and Prime Tanning initiated an action, on behalf of themselves and all others similarly situated, in the Circuit Court of Buchanan County, Missouri, captioned *Heartland Regional Medical Center, et al. v. Oneok Inc., et al.*, Case No. 07BU CV 01316, which was removed to the United States District Court for the Western District of Missouri on April 27, 2007, Case No. 07-cv-06048 (the “Heartland Action”);

**WHEREAS**, on November 4, 2005, Learjet and Topeka initiated an action, on behalf of themselves and all others similarly situated, in the District Court of Wyandotte County, Kansas, captioned *LearJet, Inc., et al. v. Oneok Inc., et al.*, Case No. 05-cv-1500, which was removed to the United States District Court for the District of Kansas on December 7, 2005, Case No. 05-cv-02513 (the “Learjet Action”);

**WHEREAS**, each of the Kansas and Missouri Actions was transferred to the United States District Court for the District of Nevada (the “MDL Court”) and consolidated in a multi-district litigation captioned *In re Western States Wholesale Natural Gas Antitrust Litigation*, Case No. 2:03-cv-01431-PMP-PAL, MDL No. 1566 (the “MDL Litigation”);

**WHEREAS**, on November 17, 2009, Learjet and Topeka filed the *Second Amended Complaint* in the MDL Litigation [MDL Docket No. 1857], asserting claims on behalf of themselves and the Kansas Putative Class (the “Kansas Complaint”);

**WHEREAS**, on November 19, 2009, Heartland and Prime Tanning filed the *Amended Complaint for Damages* in the MDL Litigation [MDL Docket No. 1863], on behalf of themselves and the Missouri Putative Class, adding Northwest Missouri as a party (the “Missouri Complaint”);

**WHEREAS**, on June 14, 2017 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”), thereby commencing the Chapter 11 Cases, and automatically staying the MDL Litigation;

**WHEREAS**, on August 2, 2017, the Court entered the *Agreed Order Lifting the Automatic Stay* [Docket No. 449] (the “Lift-Stay Order”), lifting the automatic stay as to the MDL Litigation;

**WHEREAS**, the Named Claimants filed proofs of claim on their own behalf premised on the Kansas Complaint and Missouri Complaint, including but not limited to the proofs of claim numbered 1220, 1221, 1222, 1223, 1224, 1225, and 1226. The Named Claimants also filed a *Motion and Memorandum of Law of the Natural Gas Litigation Midwest Class Plaintiffs in Support of Allowance of Class Proofs of Claim* [Docket No. 767], requesting authorization to file purported class proofs of claim on behalf of putative classes alleged in the MDL Litigation, proofs of claim numbered 1222 and 1224 (along with proofs of claim numbered 1220, 1221, 1222, 1223, 1224, 1225, and 1226, and any other proofs of claim filed by the Kansas Claimants or Missouri Claimants, the “Proofs of Claim”), which was denied without prejudice [Docket No. 1165];

**WHEREAS**, on November 6, 2017, the Named Claimants filed the *Heartland Regional Medical Center, Northwest Missouri State University, Prime Tanning Corporation, Learjet, Inc., Topeka Unified School District 501, NewPage Wisconsin System Inc. (N/K/A Verso Minnesota Wisconsin LLC), Arandell Corp., Merrick’s Inc., Sargento Foods, Inc., Ladish Co., Inc. (N/K/A ATI Ladish LLC), Carthage College, and Briggs & Stratton Corporation’s Limited Objection to Confirmation of Debtors’ Chapter 11 Plan* [Docket No. 1085] (the “Release Opt-Out”);

**WHEREAS**, on December 12, 2017, this Court entered an order (the “Confirmation Order”) confirming the *Third Amended Joint Chapter 11 Plan of Reorganization of GenOn Energy, Inc. and its Debtor Affiliates* [Docket No. 1250, Ex. A.] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”);

**WHEREAS**, on February 26, 2018, the Debtors filed the *Debtors’ Objection to Certain Proofs of Claim (Natural Gas Litigation)* [Docket No. 1481] (the “Objection”), seeking to disallow and expunge the Proofs of Claim;

**WHEREAS**, on March 21, 2018, the Named Claimants filed the *Expedited Motion of the Natural Gas Litigation Midwest Plaintiffs to Stay or Deny Debtors’ Claim Objection* [Docket No. 1521] (the “Stay-or-Deny Motion”), and the *Expedited Motion of the Natural Gas Litigation Midwest Plaintiffs to Enforce the Agreed Order Lifting the Automatic Stay* [Docket No. 1522] (the “Lift-Stay Motion”);

**WHEREAS**, on March 26, 2018, the Named Claimants filed the *Midwest Plaintiffs’ Opposition to Debtors’ Motion to Schedule Certain Dates and Deadlines and Establish Certain Protocols in Connection with Debtors’ Objection to Certain Proofs of Claim (Natural Gas Litigation)* [Docket Nos. 1481, 1482] [Docket No. 1529] (the “Response”) in response to the Objection;

**WHEREAS**, on May 14, 2018, the Debtors filed the *Debtors’ Opening Memorandum in Further Support of their Objection to Certain Proofs of Claim (Natural Gas Litigation)* [Docket No. 1623], and the Named Claimants filed the *Midwest Plaintiffs’ Brief Regarding Jurisdiction, Authority, Prior Pending Case Doctrine, Due Process, Comity, Abstention or Collateral Impact of the Court’s Decisions in Connection with Debtors’ Objection to Certain Proofs of Claim (Natural Gas Litigation)* [Docket No. 1622];

**WHEREAS**, on May 25, 2018, the Debtors filed the *Debtors' Reply Memorandum in Further Support of their Objection to Certain Proofs of Claim (Natural Gas Litigation)* [Docket No. 1628], and the Named Claimants filed the *Midwest Plaintiffs' Response Brief to Debtors' Opening Memorandum in Further Support of their Objection to Certain Proofs of Claim (Natural Gas Litigation)* [Docket No. 1629] (together with Docket Nos. 1622, 1623, and 1628, the "Supporting Briefs");

**WHEREAS**, on May 31, 2018, the Parties filed a *Notice of Filing of Agreed Order and Stipulation Resolving Debtors' Objection to Certain Proofs of Claim (Natural Gas Litigation)* [Docket Nos. 1646] (the "Stipulation");

**WHEREAS**, the Parties have agreed to resolve the Proofs of Claim, the Objection, the Stay-or-Deny Motion, and the Lift-Stay Motion, the Response, and the Supporting Briefs, on the terms and conditions set forth in this Settlement Agreement;

**NOW, THEREFORE**, in consideration of the representations, acknowledgements promises, recitals, mutual covenants, terms and conditions contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **AGREEMENT**

1. **Conditions to Effectiveness.**

- (a) Notwithstanding anything to the contrary herein, the Parties acknowledge and agree that the effectiveness of this Settlement Agreement is expressly conditioned upon: (i) entry of a final, non-appealable order by the Bankruptcy Court approving the Settlement Agreement pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019 (the "Approval Order"); (ii) entry of a final, non-appealable order by the MDL Court dismissing, with prejudice, the Debtors from each of the Kansas and Missouri Actions, including but not limited to the Kansas Complaint and Missouri Complaint (the "Dismissal Order"); and (iii) payment of the Settlement Amount. If any of these three conditions do not occur for any reason other than breach of this Settlement Agreement by a Party, this Settlement Agreement shall be of no force and effect, and the Parties shall have all rights, claims, and defenses they possessed prior to entering into this Settlement Agreement.
- (b) The date on which this Settlement Agreement shall become effective is the date that is seven (7) days after the conditions set forth in Sections 1(a)(i)-(iii) are satisfied (the "Settlement Effective Date").
- (c) The Parties' obligations with respect to this Settlement Agreement, except for the Debtors' obligation to seek entry of the Approval Order by this Court, the Kansas Claimants and Missouri Claimants' obligation to seek entry of the Dismissal Order by the MDL Court, and payment of the Settlement Amount, are subject to the occurrence of the Settlement Effective Date. Within ten (10) days of execution of this Settlement Agreement, counsel for the Debtors ("Debtors'

Counsel”) shall prepare and file all papers necessary to obtain the Approval Order, including a motion for same (the “Approval Motion”), which (along with the form of the Approval Order) shall be in a form reasonably satisfactory to Claimants’ Counsel. Within fourteen (14) days of the Debtors’ payment in full of the Settlement Amount, counsel for the Kansas Claimants and Missouri Claimants (“Claimants’ Counsel”) shall file all papers necessary to seek entry of the Dismissal Order. If the MDL Court does not enter the Dismissal Order, this Settlement Agreement shall have no force or effect, and the Kansas Claimants and Missouri Claimants shall return the Settlement Amount to the Debtors within ten (10) days of entry of an order denying the request for entry of the Dismissal Order.

2. **Agreed Claims.**

- (a) The Proofs of Claim shall be allowed in the aggregate amount of \$3,850,000.00 (the “Settlement Amount”), and classified as Class 6 General Unsecured Claims (as defined in the Plan). Upon the Settlement Effective Date, the Proofs of Claim shall be deemed withdrawn and expunged with prejudice.
- (b) Proceeds from the Settlement Amount shall be shared *pro rata* among the following entities and/or individuals (each a “Settlement Claimant”):
  - (i) The Named Claimants;
  - (ii) Members of the Kansas Putative Class and Missouri Putative Class who have previously submitted valid claims for settlement proceeds to Claimants’ Counsel in connection with prior settlements<sup>2</sup>;
  - (iii) Members of the Kansas Putative Class and Missouri Putative Class who make a valid claim in this Court for funds from the Settlement Amount by the date that is thirty (30) days after Claimants’ Counsel provides the notice contemplated under Paragraph 4(a) herein (the “Settlement Claims Bar Date”, and each claim submitted by such Settlement Claimant, a “Settlement Claim”).
- (c) Any Kansas Claimant or Missouri Claimant who is not a Settlement Claimant shall not be entitled to any share of the Settlement Amount, and shall be subject to the Claims Bar Date, subject to applicable law.

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<sup>2</sup> On July 12, 2018, Claimants’ Counsel shall provide, subject to a confidentiality agreement, a list of members of the Kansas Putative Class and the Missouri Putative Class that previously made a claim to settlement funds in prior settlements in the MDL Litigation. The Parties expressly acknowledge that this list of claimants represents only those entities that made a claim to funds in previous settlements in Missouri and Kansas, and in no way limits the ability of others to make claims to settlement funds or otherwise represents or limits the size of the Kansas Putative Class or the Missouri Putative Class.

- (d) The Settlement Amount shall be paid by wire transfer within four days of entry of the Approval Order to Claimants' Counsel. Claimants' Counsel will provide wire instructions and a Form W-9 to Debtors' Counsel no later than July 6, 2018.
- (e) Claimants' Counsel or their designee, not the Debtors, shall be solely responsible for distributing the *pro rata* portions of the Settlement Amount, less attorneys' fees and expenses (as described herein), to each Settlement Claimant. All settlement payments to each Settlement Claimant, attorneys' fees, legal expenses, and costs of processing, mailing, and accounting for settlement distributions shall be paid exclusively from the Settlement Amount.
- (f) The Approval Motion shall contain a request for approval of Claimants' Counsel's attorneys' fees and legal costs. That request shall specify the amount of attorneys' fees requested based on Claimants' Counsel's contingent fee contracts with the Named Claimants, and shall specify the amount of Claimants' Counsel's advanced expenses sought to be reimbursed from the Settlement Amount. Debtors' Counsel shall work in good faith with Claimants' Counsel to draft the request for approval of attorneys' fees and expenses, and shall not file the Approval Motion without Claimants' Counsel's approval of the portion of the Approval Motion containing that request, such approval not to be unreasonably withheld. Notwithstanding anything to the contrary herein, the Court's consideration and determination on Claimants' Counsel's request for approval of attorneys' fees and expense reimbursement shall not prevent or delay the entry of an order otherwise granting the Approval Motion. For the avoidance of doubt, this Settlement Agreement shall have full force and effect regardless of the Court's grant or denial of Claimants' Counsel's request for approval of fees and expense reimbursement.
- (g) The Approval Motion shall also contain a request for the Bankruptcy Court to authorize Claimants' Counsel to communicate with the Missouri Putative Class and the Kansas Putative Class regarding this Settlement Agreement and the opportunity to make claims to a *pro rata* portion of the Settlement Amount. Debtors' Counsel shall work in good faith with Claimants' Counsel to draft the request for authority to communicate with the putative class members, and shall not file the Approval Motion without Claimants' Counsel's approval, such approval not to be unreasonably withheld, of the portion of the Approval Motion containing that request.
- (h) The Settlement Amount shall be reflected on the Bankruptcy Court's official claims register.
- (i) The Named Claimants will give further notice of the Settlement Agreement by filing a notice of the Settlement Agreement and this Order on the docket for the MDL Litigation. The Parties agree that they will work cooperatively to provide all notice necessary and follow all appropriate procedures, including under Fed. R. Civ. P. 23, as applicable, to protect the Parties, the Kansas Claimants, the Missouri Claimants, the Court, the MDL Court, and all involved counsel;

3. **Dismissal of Kansas and Missouri Actions.** Upon the Approval Order becoming final and non-appealable, and upon full and final payment of the Settlement Amount on the terms outlined herein, Kansas Claimants and Missouri Claimants shall voluntarily dismiss, with prejudice, the Debtors from each respective Kansas and Missouri Action, including but not limited to the Kansas Complaint and Missouri Complaint. A file-stamped copy of the Dismissal Order shall be sent to counsel for the Debtors at the following address:

Mark McKane, P.C.  
Kirkland & Ellis LLP  
555 California Street, Fl. 29  
San Francisco, CA 94104

4. **Further Notice of Settlement and Rule 9019 Motion.**

- (a) Upon the later of August 15, 2018, or within three (3) days of entry of the Approval Order, Claimants' Counsel, at their own expense, shall provide further notice of (i) this Settlement Agreement, (ii) the Approval Order, (iii) the Settlement Claims Bar Date, and (iv) the specific language of the Mutual Release and Covenant Not to Sue (described below), by mail to the previously identified lists of potential members of the Kansas Putative Class and Missouri Putative Class, and on the docket for the MDL Litigation. Such notice to the Kansas Putative Class and the Missouri Putative Class shall specifically list the Settlement Claims Bar Date.

5. **Mutual Release and Covenant Not to Sue.**

- (a) Effective as of the payment of the Settlement Amount, or as of the Settlement Claims Bar Date for Settlement Claimants who submit a valid Settlement Claim after the payment of the Settlement Amount but before the Settlement Claims Bar Date, in consideration of the covenants undertaken in this Settlement Agreement, the Debtors, on the one hand, and each Settlement Claimant, on the other hand, each on behalf of themselves and (i) each of their respective current and former, direct and indirect, parent companies, subsidiaries, and affiliates; (ii) the respective assigns, predecessors, successors, and related entities of the entities in subsection (i) hereof; and (iii) all current and former employees, agents, directors, officers, managers, members, stockholders, partners, limited partners, equity holders, professionals, staff, principals, owners, and other representatives of the Parties and of the individuals and entities in subsections (i) and (ii) hereof (collectively, (i) through (iii) are the "Related Parties"), for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and having been represented by counsel and having been fully and adequately informed as to the facts, circumstances and consequences of this Settlement Agreement, each hereby irrevocably and unconditionally release, acquit, and forever discharge the other, and all of the other's respective Related Parties, contractors, and attorneys (all of which and whom are collectively referred to as "Releasees"), with respect to and from, any and all claims, demands, charges,

additional costs, rights, liens, agreements, contracts, covenants, actions, suits, causes of action, arbitration, tax assessments, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, indemnities, variances, trespasses, damages, compensation, fines, penalties, losses, orders and liabilities, of whatever kind or nature in law, equity or otherwise, whether now known or unknown, compulsory or permissive, sounding in tort, contract, statutory or regulatory violation or otherwise, suspected or unsuspected, discovered or undiscovered, foreseen or unforeseen, vested or contingent, accrued or unaccrued, liquidated or unliquidated, asserted or unasserted, matured or unmatured, direct or indirect, derivative or subrogated, individual, class, representative, or other capacity, that the Parties and their respective Related Parties now own or hold, or have at any time heretofore owned or held, or may in the future hold against said Releasees, or any of them, arising out of or in any way relating to any of the facts alleged in each of the Kansas and Missouri Actions, including but not limited to facts alleged in the Kansas Complaint and Missouri Complaint, and the Settlement Agreement, ***provided however*** that the foregoing release does not, shall not, and is not intended to release any claims, causes of action, or other rights of any Party arising out of or related to any breach of, or to enforce the terms of, this Settlement Agreement;

- (b) Effective upon the occurrence of the Settlement Effective Date, each of the Parties, on behalf of itself and its respective Related Parties, covenants and agrees not to pursue or prosecute any suit, claim, action, or proceeding seeking recovery against or from any one or more of the Releasees arising out of or relating to any one or more of the claims released hereunder, ***provided, however***, that the foregoing covenant does not, shall not, and is not intended to preclude any Party from asserting or prosecuting any claim or cause of action arising out of or related to any breach of, or to enforce the terms of, this Settlement Agreement.
- (c) Upon the later of the Settlement Effective Date or the Settlement Claims Bar Date, the Response, Supporting Briefs, Lift-Stay Motion, the Stay-or-Deny Motion, and the Objection shall be deemed resolved as to each Settlement Claimant, the Release Opt-Out shall be deemed withdrawn as to each Settlement Claimant, and each Settlement Claimant shall be deemed a Releasing Party for all purposes under the Plan and Confirmation Order.
- (d) For the avoidance of doubt, NewPage Wisconsin System, Inc. (n/k/a Verso Minnesota Wisconsin LLC), Arandell Corp., Merrick's, Inc., Sargento Foods, Inc., Ladish Co., Inc. (n/k/a ATI Ladish LLC), Carthage College, and Briggs & Stratton Corporation, as well as any putative class members in the Wisconsin actions (together, the "Wisconsin Plaintiffs") pending in the MDL Litigation (the "Wisconsin Actions"), shall not be considered Releasing Parties under the terms of this Settlement Agreement, the Response, Supporting Briefs, Lift-Stay Motion, Stay or Deny Motion, Class Proof of Claim Allowance Motion, and the Objection, shall not be deemed withdrawn as to the Wisconsin Plaintiffs, and nothing in this Agreement or any pleadings or orders contemplated in this

Settlement Agreement shall affect the Wisconsin Actions or the Wisconsin Plaintiffs in any way.

- (e) The Approval Order shall contain self-effectuating provisions to implement the foregoing.

6. **Representations and Warranties.**

- (a) Each of the Parties acknowledges, agrees, represents and warrants that:
  - (i) It has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any claim or cause of action released pursuant to this Settlement Agreement;
  - (ii) There are no liens or claims of lien, or assignments in law or equity or otherwise, of or against any claim or cause of action released pursuant to this Settlement Agreement;
  - (iii) It has duly executed and delivered this Settlement Agreement and is fully authorized to enter into and perform this Settlement Agreement and every term hereof and has the authority to bind the entity on whose behalf it has executed the Settlement Agreement;
  - (iv) It has been represented by legal counsel in the negotiation and joint preparation of this Settlement Agreement, has received advice from legal counsel in connection with this Settlement Agreement and is fully aware of this Settlement Agreement's provisions and legal effect; and
  - (v) It enters into this Settlement Agreement freely, without coercion, and based on its own judgment and not in reliance upon any representations or promises made by the other Parties, apart from those set forth in this Settlement Agreement.
- (b) Each of the Parties acknowledges the materiality of the foregoing representations and warranties.

7. **Waiver of California Civil Code Section 1542 and Analogous Statutes.** This Settlement Agreement is the result of a compromise and shall not be deemed an admission of the truth or correctness of the claims or contentions of any Party to this Settlement Agreement against any other Party. It is understood by the Parties that there is a risk that subsequent to the execution of this Settlement Agreement the claims of any Party with respect to the subject matter hereof may be discovered to be greater or less than any Party now expects or anticipates. Each Party assumes this risk and the releases contained herein shall apply to all unknown, undiscovered, or unanticipated results, as well as those known, discovered and anticipated. The Parties expressly waive and relinquish all rights and benefits afforded by Section 1542 of the California Civil Code and analogous statutes, and any law of any state or territory of the United States, or principle of common law, or the law of any foreign jurisdiction, that is similar,

comparable or equivalent to Section 1542 of the California Civil Code with respect to all claims and other rights released pursuant to this Settlement Agreement, and do so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542. Section 1542 of the California Civil Code states as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Each Party has read and understands the provisions of California Civil Code Section 1542 and acknowledges and agrees that, although it may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the claims released pursuant to the provisions of this Settlement Agreement, it hereby expressly waives the benefits of California Civil Code Section 1542 and analogous statutes, and any law of any state or territory of the United States, or principle of common law, or the law of any foreign jurisdiction, that is similar, comparable or equivalent to Section 1542 of the California Civil Code, and fully, finally and forever settles and releases any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claims related to those claims and other rights released pursuant to this Settlement Agreement, without regard to the subsequent discovery or existence of such different or additional facts.

8. **Governing Law and Construction of Agreement.**

- (a) This Settlement Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas without regard to its internal choice of law rules.
- (b) Any ambiguity in or dispute regarding the interpretation of this Settlement Agreement shall not be resolved by any rule of interpretation providing for interpretation against the drafting Party.

9. **Jurisdiction.**

- (a) The Parties consent to the non-exclusive jurisdiction of the Bankruptcy Court over the approval, implementation, administration, interpretation, and enforcement of this Settlement Agreement.
- (b) The Parties acknowledge and agree that the MDL Court retains non-exclusive jurisdiction over all aspects of the MDL Litigation. In the event the MDL Court has transferred the respective Kansas and Missouri Actions from the MDL Court to the United States District Courts for the Districts of Kansas or Missouri, respectively, before entry of the Dismissal Order, the Parties acknowledge and

agree that each such courts shall have non-exclusive jurisdiction over all aspects of the respective Kansas and Missouri actions pending therein.

10. **No Admission or Acknowledgement.** Each of the Parties understands, acknowledges, and agrees that this Settlement Agreement constitutes a compromise and settlement of certain disputed claims arising from or relating to the Kansas and Missouri Actions, and that this Settlement Agreement shall not constitute an admission of or stipulation to any fact or liability by any of them regarding any claim or cause of action, including but not limited to the claims and causes of action released hereunder, and neither the terms hereof, nor the fact of this Settlement Agreement itself, shall be evidence of any kind in any proceeding other than a proceeding to enforce the terms of this Settlement Agreement or any instrument executed in furtherance hereof or any claim for damages or other relief for breach of any representation or warranty contained herein or in any instrument executed in connection herewith. No action taken by the Parties, or any of them, either previously or in connection with this Settlement Agreement, shall be deemed to be or construed to be (a) an admission of the truth or falsity of any of the claims made and/or raised in connection with such disputed claims or of any question of law or fact; or (b) an acknowledgment or admission by any Party of any fault, wrongdoing or liability whatsoever.
11. **Cooperation.** RRI Energy Services, LLC and its successors and assigns, agree as follows:
  - (a) For use in the potential trial of the Heartland Action or the Learjet Action under Federal Rule of Evidence 901(a), RRI Energy Services, LLC agrees to authenticate by stipulation documents or materials it previously produced to Named Claimants in the MDL 1566 Actions and which Claimants' Counsel will identify with reasonable specificity, including by Bates number where applicable; provided, however that Claimants' Counsel shall limit the requested stipulation to a reasonable number of documents and materials that are reasonably necessary to the potential trial of the Heartland Action or the LearJet Action. RRI Energy Services, LLC agrees that the stipulation will be finalized as to form and content between the parties by the Settlement Effective Date, or 60 days after Debtors' Counsel receives the draft stipulation from Claimants' Counsel, whichever is later.
  - (b) The completed stipulation will be held by Debtors' Counsel until the entry of an order from the Judicial Panel on Multidistrict Litigation remanding the claims in Heartland Action or the Learjet Action against non-settling defendants to their respective transferor courts, and RRI Energy Services, LLC will sign the stipulation and Debtors' Counsel (or RRI Energy Services, LLC) will deliver it to Class Counsel within two weeks of that remand order.
12. **Entire Agreement; Amendment; Waiver.** This Settlement Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. The Parties have executed this Settlement Agreement voluntarily, after having obtained the

advice of legal counsel, and with a full and free understanding of its terms, which may not be changed except by a writing signed by all of the Parties.

13. **Binding Effect.** This Settlement Agreement, in all of its particulars, is binding on and for the benefit of all Parties and their respective agents, employees, officer, directors, successors, affiliates, subsidiaries, assigns and representatives.
14. **Severability.** If any provision of this Settlement Agreement is declared illegal or unenforceable by a Final Order (as defined in the Plan) of a court of competent jurisdiction or an arbitrator or regulatory agency, such provision shall be deemed severable to the extent necessary to eliminate the illegality or unenforceability thereof, and all other terms and provisions shall remain valid and binding on the Parties and their respective agents, employees, officer, directors, successors, affiliates, subsidiaries, assigns and representatives.
15. **Agreement Costs and Expenses.** Each Party will pay its own legal and other costs and expenses incident to this Settlement Agreement, except as expressly provided otherwise herein.
16. **Counterpart Execution and Use of Photocopies.** This Settlement Agreement may be executed by signature of each of the Parties hereto, or their authorized representatives, on multiple copies of this Settlement Agreement, including copies transmitted by facsimile machine or electronically, and upon being so executed by all Parties hereto, shall be effective as if all signatures appeared on a single original of this Settlement Agreement.
17. **Additional Documents and Acts.** Each of the Parties agrees to execute or cause its counsel to execute any additional documents and take any further action that may reasonably be required to consummate this Settlement Agreement, or otherwise fulfill the obligations of the Parties hereunder, including but not limited to obtaining the Approval Order, Dismissal Order, and notify members of the Kansas Putative Class and Missouri Putative Class of this Settlement Agreement and the motion for entry of the Approval Order. The Parties shall bear their own costs and attorneys' fees incurred in connection with any such additional action, unless expressly provided otherwise herein.
18. **Recitals, Acknowledgement & Consent to Terms.** The Parties acknowledge that the recitals contained in this Settlement Agreement are true and correct to the best of their knowledge, and are made a part of this Settlement Agreement and incorporated by reference. The Parties acknowledge that they have read this Settlement Agreement, understand the promises, recitals, mutual covenants, representations, terms and conditions contained herein, and voluntarily consent thereto.
19. **Attorneys' Fees.** If any action is brought to enforce this Settlement Agreement, the prevailing party shall be entitled to recover its expenses and costs relating thereto, including but not limited to its reasonable attorneys' fees, from the non-prevailing individuals and/or entities who are party to the enforcement action. For the avoidance of doubt, neither Named Claimants nor Claimants' Counsel shall be liable or responsible under this provision for actions taken by or the inaction of any individuals or entities

other than the Named Claimants, and neither Debtors nor Debtors' Counsel shall be liable or responsible under this provision for actions taken by or the inaction of any individuals or entities other than the Debtors.

20. **Full and Final Settlement.** The Parties acknowledge and agree that this Settlement Agreement represents the full and final settlement of all claims and causes of action arising from or relating to the Kansas and Missouri Actions and the Proofs of Claim, with respect to each of the Parties hereto in accordance with the terms hereof.
21. **Headings.** Section headings in this Settlement Agreement are included for convenience of reference only and shall not constitute a part of this Settlement Agreement for any other purpose.

*[signature pages follow]*

**IN WITNESS WHEREOF**, the Parties hereto, intending to be legally bound hereby, have executed this Settlement Agreement.

**Counsel for Named Claimants**

**Counsel for GenOn Energy, Inc.  
RRI Energy Services, Inc.**



Name: Andrew J. Ennis  
Title: Shareholder

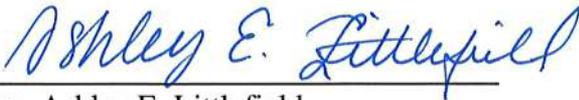
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Title:

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**Counsel for Named Claimants**

**Counsel for GenOn Energy, Inc.  
RRI Energy Services, Inc.**

\_\_\_\_\_  
Name:  
Title:

  
\_\_\_\_\_  
Name: Ashley E. Littlefield  
Title: Partner, Kirkland & Ellis LLP